Supreme Court, U.S.
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Nos. 02-1253

In the

Supreme Court of the United States

FRED RIGGS, DONNA SINGER and AL DICKSON,

Petitioners,

v.

SAN JUAN COUNTY, SAN JUAN HEALTH SERVICES DISTRICT, County Commissioner J. TYRON LEWIS, County Commissioner LYN STEVENS (official capacity only), County Commissioner MANUAL MORGAN (official capacity only), RICK BAILEY, County Attorney CRAIG HALLS, BILL REDD, REID WOOD, KAREN ADAMS, ROGER ATCITTY, PATSY SHUMWAY (official capacity only), JOHN LEWIS, LAUREN SCHAFER, TRUCK INSURANCE EXCHANGE AND DENNIS ICKES; and new district officers, NETTIE PRACK (official capacity only), GLEN IMEL (official capacity only), CLEAL BRADFORD (official capacity only), JOHN FELMETH (official capacity only) and as yet unnamed JOHN AND JANE DOES, in their official and individual capacities, jointly and severally,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

REPLY BRIEF

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PARTIES

The Respondents list of parties is incomplete. Bill Redd, past San Juan County Commissioner, is still a party in his private capacity now, Cleal Bradford, Grant Imel, Nettie Prack, and John Felmeth, have been appointed as San Juan Health Services District ('District') governance board members since the enforcement action began, and under Federal Rule of Civil Procedure at Rule 25, they are now named as parties in their 'official capacities only.'

PARTIES WITH LEGITIMATE REPRESENTATION

This Court is still uniformed as to San Juan County (County) and San Juan Health District (District) as constituent organizations', legal positions. See Petitioners response to Cross Petitions docket no. 02-1444; 02-1445.

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RESPONDENTS' STATEMENT OF THE CASE

There are some errors of the Respondents that Petitioners wish to correct. Petitioners in their Response to the Cross-Petitioners mistakenly stated the County did not respond to the original petition. Petitioners apologize. Notably, Respondents fail to produce one document, one quote from a Navajo Court document showing lack of due process, Petitioner's bad faith, or denial of the harms and facts as found by the Court.

•Resp. Brief. Pg. 3 - The Utah statute 17A-2-1204, listed as a basis for the District's origination, is a typographical error. No such statute exists. Utah code 17A-2-1304 .

•Resp. Brief Pg. 3 - Montezuma Creek Clinic (MCC) operates not on 'fee' land, but 'trust' land, owned by the Utah Navajo Trust Fund. *United States v. Jim*, 409 U.S. 80, 81-82 (1972). [1] The Tenth Circuit agrees. P. Ap. 3a. The Respondents err the "Health District owned and operated the Montezuma Creek Clinic,.... " This, is a huge error.

•Resp. Brief pg. 4 fn. 1 -The primary defense raised in Navajo Court were that the defendants were entitled to immunity using *Alden v. Maine*, 527 U.S. 706(1999) as stated on P. Ap. 30a. Pg. 4 Fn.2. The Respondents now argue they are not subject to the Navajo Preference in Employment act, but failed to raise it below in Navajo court.

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[1] The Utah Navajo Trust Fund is a 'private-purpose' fund (Utah 63-88-102(1)), "for the health, education, and general welfare of the Navajo Indians, residing in San Juan County" as required by federal mandate: (i) P.L. 72-403, 47 Stat. 1418 (1933); (ii) P.L. 90-306, 82 Stat. 121 (1968); and (iii) this chapter (63-88- 105(q)(f). **The land and clinic is bought with Navajo Money, from Navajo Federal royalties, for Navajo people, under the Navajo Treaty of 1868.**

•Resp. Brief pg. 3 There is no dispute that the Health District and County provided health care via the Districts' Indian Health Service ('I.H.S.') contract as an *independent* contract provider- an important omission. (P. S. L. 19-27). Respondents were not instrumentalities of the federal or state government, and those fiscs are not at risk here..

•Resp. Brief pg. 3- While the clinic is no longer part of the District the Respondents can work for the District, if only for one day, in order to get all benefits, back pay, and files cleared, with all amounts to be calculated by the Navajo court authority.

•Resp. Brief pg. 4 -*The legal violations in the* ***Navajo*** *Orders are consistently referred to by the* ***Navajo*** *Judge are only* ***Navajo*** *law violations.* The **Navajo** Court orders, referring to theft, defamation and other torts, in a **Navajo** Court, were referring to **Navajo** torts as verified by references throughout to **Navajo** customs and traditions, **Navajo** case law, **Navajo** statutes. No where in the Orders is 42 U.S.C. 1983 or state relief.

•Resp. Brief pg. 4 The Respondents omit they raised ***voluntary*** **COUNTERCLAIMS**, paid the Court filing fee, for alleged NAVAJO tort claims, of fraud, etc.. [2]

Again the Respondents Misstate the Claims Affirmatively and by Omissions

Resp. Brief pg. 5. Petitioners raise more than only Employment Claims. *Every* claim for Petitioners addressed by the Navajo Court was in the Application for the Preliminary Injunction. P. S. L. 1-21a. It is for the Navajo Court to determine how the orders are carried

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[2] P. Ap. 97a ('defendants, for example, plead fraud, without one piece of evidence as to Singer's intent to commit fraud and without the specificity of pleadings as required by the Navajo Nation Rules of Civil Procedure at Rule 9'), P. L. 10 ('the defendants waived any rights of immunity when they filed counterclaims and fully participated in the Court proceedings.")

out, or determine if they are overly broad or if they are moot, for Navajo violations. *Santa Clara Pueblo*, *infra*. Tribal law doctrine allows tribal members to raise claims for other tribal members. Tribal Courts have jurisdiction over collection efforts.[3] Patients had no liability for payment. [4]

The Respondents shut the ambulance garages etc. P. Ap. 72a. The County gets federal payments in lieu of taxes for services to the Navajo people. P. S. L. 9-11. The Navajo Court was correct to tell them not to threaten lives by withdrawing services.

The Attorneys Fees

•Resp. brief pg. 4 The attorneys fees of about $500,000 for the Navajo Court litigation involves four attorneys and one accountant, traveling by car to Shiprock, N. M., (no airports in Shiprock) from Salt Lake

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[3] 25 U.S.C. §§ 194 (protection of Indians); 229(the Petitioners were to go to the tribe for compensation); 231 (says nothing about privately billing publicly insured Indians); 85 (off reservation contracts did not have the previous U.S. consent for on reservation residents); 1621a (federal government will pay health claims promptly). "Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation. To assure adequate government of the Indian tribes, it enacted comprehensive statutes in 1834 regulating trade with Indians and organizing a Department of Indian Affairs. 4 Stat. 729, 735. Not satisfied solely with centralized government of Indians, it encouraged tribal governments and courts to become stronger and more highly organized. *See, e.g.*, the Wheeler-Howard Act, §§ 16, 17, 48 Stat. 987, 988, 25 U.S.C. §§ 476, 477." *Williams v. Lee*, 358 U.S. 217, 220 (1959).

[4] Public law 102-573, "Sec. 222 (a) A **Patient** who receives contract health care services that are authorized by the Service Unit CHS [Contract Health Services] **shall not be liable for payment of any charges or costs associated with the provision of such services**; (b) The Service Unit CHS shall notify a contract care provider and any patient who receives contract health care services authorized by the Service Unit CHS that **such patient is not liable for the payment of any charges or costs associated with the provision of such services**."

City and Window Rock, payment for travel, copying costs, room and lodging, and phone bills. Attorneys are entitled to be paid billable hours away from other cases while having to travel. Nevertheless, this billing issue, if it is an issue, is for the Navajo Court to determine, for which they may appeal in Navajo court.

The Navajo Court Fines

•Resp. Brief pg. 5 The Navajo Court fines were *conditional* P. L. 16. The Order's clear words are "That IN THE EVENT THAT THE DEFENDANTS FAIL TO OBEY...." It doesn't take a nickels worth of common sense to read it differently. Respondents could have avoided the fines altogether. Likewise, irreparable harm is ongoing as long as the Petitioners' harms are ignored and damages continue to escalate.

Immunity Arguments are Non-Applicable

•Resp. Brief pg. 6-7 The Respondents omit informing this Court that the immunity issue was resolved. The Tenth Circuit Court in this case below, found

> "Contrary to the County defendants' assertion on appeal, ...tribes are not subordinate to states, [citations omitted], and certainly not to counties.... We must reject County appellee's assertion "that the natural dominion of States and their political subdivisions over tribal governments was clearly established before the United States *Constitution* came into being and that there has been nothing post *Constitution* to change that fact."

MacArthur et al v. San Juan County et al, 309 F.3d 1216 (10th Cir. 2002). P. Ap. 11a.

•Resp. Brief pg. 7 The Respondents fail to inform the Court that the 10th circuit Court demanded a study of subject matter jurisdiction under *Nat'l Farmers Union Ins. Cos. V. Crow Tribe*, 471 U.S. 845, 855-56 (1985) 'for

a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions." P. Ap. 25a. *Montana* and progeny splits with *Nat'l Farmer's*, federal code provisions, Executive Branch policy, *supporting* Tribal authority.

> "... It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. The cases in this Court have **consistently guarded the authority of Indian governments over their reservations**. Congress recognized this authority in the Navajos in the Treaty of 1868, and has done so ever since, **If this power is to be taken away from them, it is for Congress to do it.**"

Williams v. Lee, 358 U.S. 217 (1959).

Either rulings prior to *Oliphant* were Constitutionally correct, or after *Oliphant*, not both.

COURT OF APPEALS DOES CONFLICT WITH UNITED STATES V. ENAS

•Resp. Brief 9-12. The **Respondents support** the Petitioners' argument of Congress' definition of Indian Tribal Court jurisdiction being at odds with this Court and *United States v. Enas*, 255 F. 3d 662 (9th Cir. 2001)(en banc) by quoting *Enas* 'Congress stated such jurisdiction was inherent, *not delegated by Congress*'. Resp. Brief pg. 10 'The Ninth Circuit found that Duro's historical analysis of a tribe's sovereign power over non-member Indians was one of 'federal common law', which is more akin to statutory interpretation than Constitutional issues, giving Congress the last word on such issues. Id. at 674-675." Resp. Brief at page 10 fn. 10. A direct conflict with *Oliphant*, *Montana* and their 'implicit divestiture' progeny including *Nevada v.*

Hicks, 533 U.S. 353 (2001) Although. "*Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana* at 465. *Enas* applies to civil cases. To remand for a *Montana* jurisdiction definition, instead of relying solely on Congress' jurisdiction definition and Executive interpretations, conflicts with *Enas* and exceeds Article III Court's authority.

Respondents Misread the Importance of the 1968 Indian Civil Rights Act For Tribal Court Jurisdiction

Resp. Brief pg. 13 The *Hicks* decision clearly stated the Conflict Petitioners wish the Court to address, as is even within this Court.

> "Another exaggeration is the concurrence's contention that we "give nonmembers freedom to act with impunity on tribal land based solely on their status as state law enforcement officials," *post*, at 16 (opinion of O'Connor, J.). We do not say state officers cannot be regulated; we say they cannot be regulated in the performance of their law-enforcement duties. Action unrelated to that is potentially subject to tribal control depending on the outcome of *Montana* analysis. Moreover, even where the issue is whether the officer has acted unlawfully in the performance of his duties, the tribe and tribe members are of course able to invoke the authority of the Federal Government and federal courts (or the state government and state courts) to

> vindicate constitutional or other federal- and state-law rights."

Hicks, supra

The Respondents and *Hicks* ignore the Petitioners' *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) arguments. As Justice Holmes wrote for the Court, a "suit arises under the law that creates the cause of action." *Nat'l Farmers* at 851. **Indian** Civil Rights claims, **Navajo** law violations belong in **Navajo** Court. *Santa Clara Pueblo, supra. Hicks* disregards **Indian** law violations exclusive to Tribal Courts as if they do not exist.

> "Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and **property interests of both Indians and non-Indians**. [citations omitted]. Nonjudicial tribal institutions have also been recognized as competent law-applying bodies. See United States v. Mazurie, 419 U.S. 544, 95 S.Ct. 710, 42 L.Ed.2d 706 (1975). Under these circumstances, we are reluctant to disturb the balance between the dual statutory objectives which Congress apparently struck in providing *only* for habeas corpus relief."

Santa Clara at page 51-53.

THE 2000 TECHNICAL ASSISTANCE ACT DOES PROVIDE TRIBAL COURTS WITH CIVIL JURISDICTION OVER NON-INDIANS

Petitioners made a typographical error on pg. 19. The cite should read 25 U.S.C 3651, not 1351. Resp. Brief pg. 15 fn. 11. The year 2000 technical amendments **strengthen** Tribal administration of

Justice. 25 U.S.C. 3651(3), (5). Congress cannot mandate Tribal Courts dispense 'justice', *un*equally, based upon race, national origin, or land ownership where the injury occurred within a federal reservation, as this Court demands. No Article I authority exists for such law, especially by Treaty Law.

THE UNITED STATES RATIFICATION OF THE UNITED NATIONS COVENANT ON CIVIL AND POLITICAL RIGHTS DOES MANDATE TRIBAL COURTS HAVE JURISDICTION OVER NON-INDIANS WITH RESPECT TO CLAIMS ARISING WITHIN

•Resp. Brief. 16 The respondents fail to address the Petitioners' Supreme law of the land Article VI argument. The United Nations International Covenant on Civil and Political Rights Part I Article I, Sec. 3; Part III, Art. 14, Sec. 1" is listed. "All peoples have the right of self-determination...." Id. Part I, Art. I, sec. 3. " All persons shall be equal before the **courts and tribunals**....."Id. Part III, Art. 14, Sec. 1. The Navajo Court is a 'court and tribunal' in the U. S., signatory, for **'all** persons' having **EQUAL** Courts' access, if injured within Navajo country as *Congress and Treaties* defines it in 2000. Undisputably, Article VI Supreme law.

•Resp. Brief fn. 12 claim the Petitioners did not provide a complete copy of the State Department's compliance report they cite on Petition Page 17, nor provide an adequate citation. First, the Report cite is found in footnote 7 *and* footnote 8 and a copy is provided P. L. 143. The *full report* is available by the hyperlink at the bottom of the page at P. L . 143 and fn. 8 Petition page 17.

TRIBAL COURT JURISDICTION OVER NON-INDIANS IS MANDATED BY EXECUTIVE ORDERS

•Resp. Brief pg. 18. Executive Orders 13175, and President Bush's proclamation P. L. 138, support, as the Respondents state, Tribal **self**-government.[5] The Respondents fail to address the Executive Branch defines the Tribal Justice Support Act with contracts. P. L. 55-59, P. S. L. 30 et seq. a study of which is demanded under *Nat'l Farmers*. Navajo law defines its jurisdiction without regard to land ownership, or race or National origin. 7 N. N. Code 254 P. L. 28, 29, 62. The BIA supports this Navajo definition by contract and funding. P. L. 55-59, P. S. L. 30 et seq., and Congress does so by 25 USC 3653 and other statutes. Previously referenced.

RESPONDENTS FAIL TO ADDRESS FULLY THE TERRITORIAL ARGUMENT AND ARTICLE III CONSTITUTIONAL ANALYSIS

The Respondents fail to address the arguments that Indian Tribes qualify as a territory or possession for purposes of 28 USC 1738 full faith and credit and for control by Congressional *plenary* powers, or Article VI trumps state law. Petition pg. 22-24.

RESPONDENTS FAIL TO STATE THE PETITIONER'S QUESTION IS NOT OF NATIONAL IMPORTANCE

Respondents don't rebut petitioner's question is question of national importance of whether the Article III Courts *or* Congress' *plenary* powers, defines Tribal Court authority under an Article III analysis and Constitutional construct. *See*, 25 U.S.C. 3651, 3652, 3653,

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[5] In the year 2000, Congress said ".....(5) tribal justice systems are an **essential** part of tribal governments and serve as important forums for ensuring the health and safety and the political integrity of tribal governments". 25 U.S.C. 3651.

3663. ".....The judicial **shall never exercise the legislative and executive powers**, or either of them: to the end it may be a government of *laws* and not of *men*."..." *Morrison v. Olson*, 487 U.S. 654(1988)(J. Scalia dissent). To determine which powers Tribes enjoy, one must look at "specific restrictions" in treaties or Congressional statutes.[6]

CONCLUSION

Based upon the foregoing, Petitioners' petition should be granted, and the Respondents cross-petitions should be denied.

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[6] United States v. Wheeler, 435 U.S. 313, 323 (1978). "In sum, Indian Tribes still possess those aspects of sovereignty not withdrawn by treaty or statue, or by implication as a necessary result of their dependent status." Id. The Court has rejected attacks on the institutional competency of tribal courts as "contrary to * * * congressional policy," *Iowa Mut. Ins. Co. v. La Plante*, 480 U.S. 9, 19 (1987) and to its own precedents, *Santa Clara Pueblo*, 436 U.S. at 65-66. See also 25 U.S.C. 3601 *et seq.* " [T]hose powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished. " 10th Cir. *MacArthur et al v. San Juan County, et al*, below, P. Ap. 11a. "Tribal courts are appropriate forums for *the exclusive* adjudication of disputes over transactions taking place within the boundaries of a reservation." *U.S. v. Plainbull*, 957 F.2d 724, 727 (9th Cir. 1992) (citing *Santa Clara Pueblo v. Martinez*....).